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1 Attorneys for Defendant County of San Diego

2 UNITED STATES DISTRICT COURT  
3  
4 NORTHERN DISTRICT OF CALIFORNIA  
5  
6 (OAKLAND DIVISION)

7 BNSF RAILWAY COMPANY,  
8 Plaintiff,  
9  
10 vs.  
11  
12 ALAMEDA COUNTY, CALIFORNIA, et al.,  
13 Defendants.

14 No.: Case No. 4:19-cv-07230-HSG

15 **STIPULATION FOR ENTRY OF  
16 JUDGMENT AND FINAL JUDGMENT AS  
17 TO ALAMEDA, CONTRA COSTA,  
18 FRESNO, KERN, MADERA, MERCED,  
19 ORANGE, PLUMAS, RIVERSIDE, SAN  
20 BERNARDINO,  
21 SAN DIEGO, SAN JOAQUIN,  
22 STANISLAUS, AND TULARE COUNTIES**

23 Judge: Hon. Haywood S. Gilliam, Jr.

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28 STIP. FOR ENTRY OF JUDG. & FINAL  
JUDGMENT – 4:19-cv-07230-HSG

**STIPULATION FOR ENTRY OF JUDGMENT**

WHEREAS, on November 1, 2019, the BNSF Railway Company (“BNSF”) filed this action against the Defendants Alameda, Contra Costa, Fresno, Kern, Kings, Madera, Merced, Orange, Plumas, Riverside, San Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare Counties asserting a violation of Section 306 of the federal Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. § 11501) (“section 11501”) in connection with the rate of ad valorem property taxation levied on BNSF’s unitary property by the Defendant Counties in their respective jurisdictions; and

WHEREAS, on April 8, 2020, after finding reasonable cause to believe that a violation of section 11501(b)(3) had been, or was about to be, committed, this Court granted BNSF's Motion for a Preliminary Injunction to enjoin the Defendant Counties "through the pendency of this litigation until entry of a final judgment from levying or collecting ad valorem property taxes from Plaintiff on its unitary property based on a tax rate higher than the annual average tax rate of general property taxation calculated and reported for each county by the California State Board of Equalization under Cal. Rev. & Tax Code § 11403." (*BNSF Railway Co. v. Alameda County*, 445 F. Supp. 3d 201, 211-12 (N.D. Cal. 2020)); and

WHEREAS, on September 29, 2020, the Court entered a Final Judgment with respect to Kings County pursuant to a Stipulation for Entry of Judgment between BNSF and Kings County; and

WHEREAS, on August 5, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion affirming this Court’s Order granting BNSF’s Motion for a Preliminary Injunction (*BNSF Railway Co. v. County of Alameda, et al.*, 7 F.4th 874 (9th Cir. 2021)); and

WHEREAS, in its decision, the Ninth Circuit acknowledged that section 11501(b)(3), which prohibits a county from levying or collecting “an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction,” is difficult to apply in California because the State does not have a specific tax rate for commercial and industrial property against which to compare the rate applied to railroad property (*BNSF Railway Co.*, 7 F.4th at 885); and

1           WHEREAS, the Ninth Circuit had previously ruled in another case presenting a  
2 challenge under section 11501(b)(3) that, because a specific rate generally applicable to commercial  
3 and industrial property in California is not readily apparent, the court in that case should use either the  
4 tax rate applicable to the tax roll that contains the majority of commercial and industrial property (*i.e.*,  
5 either the secured or unsecured roll), or “the average tax rate for all property.” *Trailer Train Co. v.*  
6 *State Board of Equalization*, 697 F.2d 860, 867 (9th Cir. 1983); and

7           WHEREAS, the Ninth Circuit affirmed this Court’s decision to analyze BNSF’s tax rate  
8 under the *Trailer Train* framework, pursuant to which this Court determined that as an alternative to  
9 the tax rate for commercial and industrial property, it is appropriate to use as the basis for comparison  
10 the average tax rate for property in each County because there is no single identifiable tax rate  
11 applicable to the secured or unsecured rolls (*BNSF Railway Co.*, 7 F.4th at 886, 888; *BNSF Railway*  
12 *Co.*, 445 F. Supp. 3d at 208, 212); and

13           WHEREAS, the Ninth Circuit stated, as had this Court, that the average tax rate for all  
14 property in each County is calculated each year by the State Board of Equalization pursuant to  
15 California Revenue and Taxation Code section 11403 (*BNSF Railway Co.*, 7 F.4th at 883); and

16           WHEREAS, pursuant to these rulings, the Counties have been preliminarily enjoined  
17 from levying or collecting an ad valorem property tax on BNSF’s unitary property at the rate otherwise  
18 required for state-assessed property under California Revenue and Taxation Code section 100(b) if that  
19 tax rate exceeds the annual average tax rate imposed on all property in each County as calculated and  
20 reported by the State Board of Equalization pursuant to California Revenue and Taxation Code  
21 section 11403 (*BNSF Railway Co.*, 7 F.4th at 882-83); and

22           WHEREAS, in order to meet the requirements of federal law but avoid the associated  
23 costs and other burdens of further litigation in this matter, BNSF and the remaining Defendants  
24 Alameda, Contra Costa, Fresno, Kern, Madera, Merced, Orange, Plumas, Riverside, San Bernardino,  
25 San Diego, San Joaquin, Stanislaus, and Tulare Counties have agreed to enter into a Stipulation for  
26 Entry of Judgment under the terms set forth in the attached [Proposed] Judgment; and

WHEREAS, the Counties have faced certain administrative challenges in implementing the Preliminary Injunction that they have worked cooperatively with BNSF to address, and which the Counties expect to continue to face in implementing the [Proposed] Judgment;

NOW THEREFORE, BNSF and Defendants Alameda, Contra Costa, Fresno, Kern, Madera, Merced, Orange, Plumas, Riverside, San Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare Counties (collectively, “the Parties”) stipulate as follows:

1. The Court has jurisdiction to enter judgment in this action.
2. The Parties consent to the Court having continuing jurisdiction for purposes of Judgment, and the Parties irrevocably and fully waive and relinquish any argument that jurisdiction by this Court is improper or inconvenient.
3. In making this stipulation, no Party admits to any conclusions of law or arguments or defenses, except as expressly stated herein.
4. The Parties request that the Court enter the [Proposed] Judgment attached.
5. The Parties waive notice of entry of the Judgment and notice and service of the Judgment.
6. The Parties waive their right to appeal the Judgment.
7. The Parties acknowledge and agree that changes in facts or law could render the Judgment in part the basis for the [Proposed] Judgment, and that such changes could justify modifying the [Proposed] Judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Such a change could include, but is not limited to, the State of California enacting into law a change to section 100(b) of the California Revenue and Taxation Code; a material change to the law that railroad property be assigned to a county-wide tax rate area; or a material change in the methods for calculating and/or levying the ad valorem property tax rate on locally assessed property.
8. The parties agree that, except as necessary to implement the [Proposed] Judgment, the parties will not file any motion to modify the Judgment under Rule 60(b) of the Federal Rules of Civil Procedure.

regarding the ad valorem property taxation of BNSF's unitary property, including but not limited to Part 9 (commencing with Section 4801) of Division 1 of the California Revenue and Taxation Code, relating to corrections, cancellations, and refunds of property taxes.

9. BNSF has separately entered into a Memorandum of Understanding with some of the Counties to address the administrative challenges the Counties expect to face in implementing the [Proposed] Judgment.

IT IS SO STIPULATED.

Respectfully submitted,

Dated: April 19, 2022

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San Joaquin, County of Stanislaus, and County of Tulare

1 Dated: April 19, 2022

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22 Dated: April 19, 2022

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1 Dated: April 19, 2022

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18 Dated: April 19, 2022

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1 Dated: April 19, 2022

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14 Dated: April 19, 2022

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22 **FILER'S ATTESTATION**

23 Pursuant to Local Rule 5-1(i), the filer attests that concurrence in the filing of this  
24 document has been obtained from each of the above signatories.

25 Dated: April 19, 2022

By: /S/ Margaret R. Prinzing

26

27

28 STIP. FOR ENTRY OF JUDG. & FINAL  
JUDGMENT – 4:19-cv-07230-HSG

**FINAL JUDGMENT AS TO DEFENDANTS ALAMEDA, CONTRA COSTA, FRESNO,  
KERN, MADERA, MERCED, ORANGE, PLUMAS, RIVERSIDE,  
SAN BERNARDINO, SAN DIEGO, SAN JOAQUIN, STANISLAUS,  
AND TULARE COUNTIES**

Pursuant to the Stipulation for Entry of Judgment filed concurrently herewith, and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## Definitions

For purposes of this Judgment, the following definitions apply:

(a) "BNSF" means the Plaintiff, BNSF Railway Company.

(b) “Benchmark Rate” means, with respect to a county and a tax year, the average tax rate of general property taxation calculated and reported for the county for the preceding tax year by the State Board of Equalization pursuant to California Revenue and Taxation Code section 11403.

(c) "County" or "Counties" means any or all of the Defendant Counties of Alameda, Contra Costa, Fresno, Kern, Madera, Merced, Orange, Plumas, Riverside, San Bernardino, San Diego, San Joaquin, Stanislaus, and Tulare.

(d) “Preliminary Injunction Order” means this Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction, issued on April 8, 2020, amended on April 22, 2020, pursuant to a stipulated request of the parties, and as affirmed by the decision of the United States Court of Appeals for the Ninth Circuit on August 5, 2021.

(e) “Unitary property” means the property of a railway company that is valued for purposes of property tax assessment using the unit valuation method, within the meaning of California Revenue and Taxation Code sections 723 and 723.1.

### Maximum Property Tax Rate

1. It is the final judgment of the Court that, for the reasons set forth in the Preliminary Injunction Order, the Counties' levy or collection of ad valorem property taxes on BNSF's unitary property in a tax year at the rate specified in California Revenue and Taxation Code section 100(b) is unlawful under 49 U.S.C. section 11501(b)(3), if and to the extent that tax rate is higher than the Benchmark Rate for that tax year.

2. The Counties, their boards of supervisors, county auditors, tax collectors, agents, employees, and all those acting in concert or participating with them, are hereby enjoined from levying or collecting ad valorem property taxes on BNSF's unitary property in a tax year at a rate higher than the Benchmark Rate for that tax year. In any year in which the tax rate specified in state law is higher than the Benchmark Rate for that tax year, a County may take steps that are necessary and appropriate to comply with state law to the extent such steps are not inconsistent with section 11501(b)(3), provided that the County accepts in satisfaction of BNSF's unitary property tax obligations under state law an amount no greater than the amount computed under the Benchmark Rate applicable to that County.

3. Nothing in this [Proposed] Judgment shall be construed to prohibit a County from levying or collecting an ad valorem property tax on BNSF's unitary property in a tax year at the rate specified in state law if and to the extent that such tax rate is lower than the Benchmark Rate for that tax year.

4. The Counties' obligations under this Judgment shall become effective on the date of entry of this Judgment.

## **Release from Escrow Obligations**

5. Upon Entry of Judgment, the full balance of the escrow account established by this Court's April 10, 2020, Order Establishing Escrow Account as Security For Preliminary Injunction, including any interest that has accrued thereon, shall be released from escrow to BNSF.

6. BNSF is released from any continuing obligation to deposit escrow amounts attributable to unitary property taxes levied by the Counties.

7. Other than the release of funds from the escrow account, the Counties have no further liability, for refunds or otherwise, for the 2019-2020 tax year, the 2020-2021 tax year, and the 2021-2022 tax year.

## Additional Terms

8. The Parties shall bear their own costs and attorney's fees.

1                   9.       The Court shall retain continuing jurisdiction over the Parties in this matter for  
2 purposes of construing, modifying, and enforcing this Judgment and issuing any other judgment or  
3 order with respect to any other relief requested by the Parties. This Court's jurisdiction shall include  
4 the power to vacate or modify this Judgment pursuant to Rule 60(b) of the Federal Rules of Civil  
5 Procedure based on any material change in facts or law justifying relief from this Judgment, including  
6 a material change to section 11501(b)(3) or the requirements of California law for calculating and/or  
7 levying the ad valorem property tax rate on railroad property which meets the requirements for levying  
8 and collecting ad valorem property taxes on BNSF's unitary property under section 11501(b)(3). Such  
9 a material change in California law could include, but is not limited to, the State of California enacting  
10 into law a material change to section 100(b) of the California Revenue and Taxation Code; a material  
11 change to the requirement that railroad property be assigned to a county-wide tax rate area; or a  
12 material change to the requirements for calculating and/or levying the ad valorem property tax rate on  
13 locally-assessed property. Such a material change could result in a court-ordered modification to this  
14 Judgment requiring a comparison rate other than the Benchmark Rate.

15                   10.      This document constitutes a judgment for purposes of Federal Rule of Civil  
16 Procedure 58.

17                   11.      This Judgment is a full and final resolution of all claims alleged in the  
18 Complaint.

19                   IT IS SO ORDERED AND ADJUDGED.

20  
21                   DATED: 4/21/2022  
22  
23  
24                   (00456688-10)



HON. HAYWOOD S. GILLIAM, JR.  
UNITED STATES DISTRICT JUDGE